

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

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3 20-CV-2578 (BMC)  
4 STUART FORCE, et al., United States Courthouse  
5 Plaintiffs, Brooklyn, New York  
6 - versus - January 28, 2022  
7 QATAR CHARITY, et al., 11:30 a.m.  
8 Defendants.

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10 TRANSCRIPT OF CIVIL CAUSE FOR PREMOTION CONFERENCE  
11 ALL PRESENT VIA VIDEOCONFERENCE  
12 BEFORE THE HONORABLE BRIAN M. COGAN  
13 UNITED STATES SENIOR DISTRICT JUDGE

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25 Proceedings recorded by mechanical stenography. Transcript  
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PROCEEDINGS

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1 (In open court; all present via videoconference.)

2 THE COURT: Okay, Melonie.

3 THE COURTROOM DEPUTY: Force, et al. versus Qatar

4 Charity, et al. Docket Number 20-CV-2578.

5 Counsel, please state your appearances, starting  
6 with the plaintiffs.

7 MR. ROCCO: Good morning, Your Honor. It's Pat  
8 Rocco with Fleischman Bonner & Rocco for the plaintiffs. With  
9 me also is my partner, James Bonner.

10 THE COURT: How are you, Mr. Bonner?

11 MR. BONNER: Good morning, Your Honor.

12 THE COURT: Good morning.

13 Okay. Defendants?

14 MR. HILLEBRECHT: Good morning, Your Honor. For  
15 defendant, Qatar Charity, it is John Hillebrecht from DLA  
16 Piper LLP. And with me is my partner, Kevin Walsh.

17 THE COURT: Good morning.

18 Next defendant?

19 MS. FORNOS: Good morning, Your Honor. Carolina  
20 Fornos with Pillsbury Winthrop on behalf of Masraf Al Rayan.  
21 And with me are my colleagues, Aryeh Kaplan and Mark Lapointe.

22 THE COURT: Good morning.

23 And who's last for the bank?

24 MR. HALLWARD-DRIEMEIER: Good morning, Your Honor.  
25 Doug Hallward-Driemeier from Ropes & Gray on behalf of Qatar

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1 National Bank. And with me is my partner, Michael McGovern.

2 THE COURT: Okay. All right, thank you all for your  
3 letters.

4 This is a premotion conference on the defendants'  
5 proposed motion to dismiss.

6 Just to tell you how I run these things.

7 I'm sorry, was there someone else's appearance I  
8 didn't get?

9 (No response heard.)

10 THE COURT: No? Okay.

11 Just to tell you how I run this kind of conference.

12 I'm going to give you some preliminary thoughts  
13 about how the motion is likely to come out. But I don't want  
14 anybody to think I've made up my mind at this stage. I  
15 haven't. I haven't seen the formal motion papers. So I'm  
16 just giving you a very preliminary reaction, and you shouldn't  
17 think, oh, the judge has already decided this issue.

18 However, if I say something that sounds right to  
19 you, you might take that into account in either making or  
20 opposing the motion.

21 Now having said that, let me first turn to what I  
22 think ought be the easiest issue, and that is the adequacy of  
23 service of process.

24 Who's the most aggressive defendant that really  
25 wants to press that issue?

1 (No response heard.)

2 THE COURT: Who's any defendant that really wants to  
3 press that issue?

4 MS. FORNOS: Your Honor, I'm happy to address that  
5 issue.

6 The service here -- I would note the following. The  
7 plaintiffs have taken the position from the outset of this  
8 litigation that letters rogatory is the proper forum to  
9 proceed with service.

10 In the interim, it shifted gears and had filed --  
11 and attempted service via Federal Express by sending Federal  
12 Expresses to various mailrooms without attesting to whoever is  
13 receiving this FedEx, and whether that person has the  
14 requisite agency to bind a corporation.

15 Under well-established principles, both in the  
16 United States and in (audio interference) I do note that the  
17 plaintiffs have cited article, I believe it was Article 11 of  
18 the Civil and Commercial Procedures Law in Qatar.

19 That's not the proper article. The proper article  
20 is 10, which deals with how one serves a corporation, and  
21 takes into consideration that it should be delivered to the  
22 chairman or the manager or the joint partners.

23 The concept here is simply that we need to provide  
24 proper notice. So, Your Honor, we will certainly respect  
25 your -- the Court's view on this, but we do believe that the

1 proper procedures should be followed.

2 THE COURT: Okay. First let me ask you, Ms. Fornos:  
3 How do I know you? Are you a former AUSA?

4 MS. FORNOS: Yes, Your Honor, I am a former AUSA in  
5 the Southern District of New York.

6 THE COURT: Okay. Well, I know you from somewhere.

7 MS. FORNOS: Yes, from the Federal Law Counsel, Your  
8 Honor.

9 THE COURT: Ah, right.

10 Everything you said is right, okay? But where does  
11 it get you? Ultimately you're going to get served, and  
12 there's going to be enough to litigate in this case without  
13 unnecessary issues.

14 It seems to me that even if the plaintiffs had some  
15 difficulty serving you, or any of the defendants, then I'd  
16 issue an order for alternative service. I could send them an  
17 email, and that's good enough that we know they'll get it.

18 So do we really need to press this point?

19 MS. FORNOS: Your Honor, we appreciate the Court's  
20 position.

21 You are correct. At the same time, we would  
22 respectfully like to preserve our right to challenge proper  
23 service, because there is an important concept here, which is:  
24 Enforcement, should this case ever proceed, judgments cannot  
25 be enforced unless proper protocols are followed. And proper

1 protocols here, pursuant to the plaintiffs' own understanding  
2 and admission, is letters rogatory.

3 MR. ROCCO: Your Honor, if I may just briefly --

4 THE COURT: No, I'll hear from you, Mr. Rocco.

5 MR. ROCCO: Okay.

6 THE COURT: Go ahead and finish, Ms. Fornos.

7 MS. FORNOS: Thank you, Your Honor.

8 I simply was trying to emphasis the most important  
9 issue for us is preserving our right to challenge.

10 And the Court is -- it may very well happen, the  
11 letters rogatory will happen, or another ruling will affect  
12 that. But we do want to preserve our rights.

13 THE COURT: I don't want you to. I mean, I  
14 understand what you're saying, but at the end of the day,  
15 you're going to get served one way or another. So your rights  
16 are illusory. It's like -- it's going to get done. Why make  
17 them litigate it?

18 Yes, you're right. If it's improper service and  
19 they get a judgment, then the judgment won't be enforceable  
20 against you, that's fine. But they're going to get proper  
21 service one way or the other. Don't we have enough to talk  
22 about?

23 All right, here's what I'm going to do. Go to your  
24 client, Ms. Fornos, and tell them, The judge would really  
25 appreciate it if on this ministerial point they not insist on

1 all of the rights that they might have and give it some  
2 reconsideration.

3           You know, there's a lot of judicial discretion in  
4 this case. I'd like to keep it even. But I expect all the  
5 parties to fight the fights that need to be fought, and not  
6 the ones they don't. So just consider it.

7           Okay, obviously I'm not going to preclude you from  
8 making this motion. You have the absolute right to make it,  
9 it's just what we call a "dilatory motion".

10           I don't know if the other two defendants are also,  
11 you know, interested in make this challenge, but if you are, I  
12 ask you also to take it back of your clients and tell them the  
13 judge would appreciate it if you not press this point.

14           Okay, so please do that.

15           Mr. Rocco, do you need to add anything, given what  
16 I've said?

17           MR. ROCCO: No, I don't, Your Honor. I will  
18 disagree with the characterizations, but that's for another  
19 day.

20           THE COURT: That's fine.

21           Either of the other defendants need to add anything  
22 to that?

23           MR. HILLEBRECHT: Not for Qatar Charity, Your Honor,  
24 no. We understand.

25           THE COURT: All right. Next, and I think this



1 should be a pretty straightforward issue that I'll ask  
2 Mr. Rocco about.

3 What about these 16 plaintiffs? How do they get  
4 into this case?

5 MR. ROCCO: Your Honor, I think there's two issues  
6 there. As to some of the 16, I think the claim, as I  
7 understand it correctly from the summary arguments of  
8 defendants, is that they were foreign nationals and then  
9 somehow not entitled to recover.

10 But the foreign nationals that are plaintiffs here,  
11 are the heirs or family members of actual U.S. nationals who  
12 were killed in the attacks at issue. So I think, as Your  
13 Honor ruled in a similar case, they do have standing. I think  
14 that disposes of that issue.

15 I know it's a disagreement with defendants as to  
16 what law will ultimately control them, but certainly there's  
17 precedent to say that the non-U.S. citizen heirs, or  
18 successors of U.S. citizens who are killed in terrorists  
19 attacks have standing.

20 So that's one issue. I think that's the majority of  
21 the 16 that we're talking about.

22 The other issue is they claim that the relationship  
23 of some, a handful of the Qatar (audio interference)  
24 plaintiffs is too remote to qualify.

25 And although they concede that there are special

1 circumstances that would allow family members who are  
2 otherwise more remote than direct kin to recover under the  
3 ATA, we think that's a fact issue, Your Honor, and we've  
4 alleged there are relationships here, and that's the way we  
5 can satisfy whatever the additional requirements are to show a  
6 special relationship of those family members.

7 We should be entitled to do that as an issue of fact  
8 rather than an issue of pleading.

9 THE COURT: Okay. But as I understand it, what the  
10 defendants are saying, is that these 16 plaintiffs are either  
11 not U.S. citizens, not surviving U.S. citizens, or not family  
12 members of those injured or killed.

13 Maybe one of the defendants that champions this  
14 point can tell me: Is it am I misphrasing it, because it's  
15 not that they're not family members, but it's that they're too  
16 remote?

17 Is that the contention the defendants are making?

18 MS. FORNOS: Yes, Your Honor. Carolina Fornos  
19 again.

20 That is the allegation, Your Honor.

21 THE COURT: Okay.

22 MS. FORNOS: We're talking about great  
23 grandchildren. We're talking about -- there's such a  
24 distance. And we do believe that there are some deficiencies  
25 there, which we're prepared to highlight in a brief.

## PROCEEDINGS

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1 THE COURT: But the statute says: Survivors or  
2 heirs, right? So do you think the statute doesn't mean what  
3 it says?

4 MS. FORNOS: Your Honor, we understand the Court's  
5 position on this, and we understand that this very issue is up  
6 on appeal at the moment in *Henkin*.

7 The way we're reading the statute is that heirs or  
8 survivors modifies the U.S. national.

9 The statute was pretty clear that it was the U.S.  
10 nationals that can -- that have the injury to their person or  
11 property, and the heirs and survivors can assert the rights of  
12 that U.S. national.

13 We do believe that that is an issue that, at a  
14 minimum, Your Honor, the Second Circuit hasn't expressly  
15 addressed, and we do want to preserve our right on that front.

16 THE COURT: Okay. That's okay. And I don't think  
17 anyone should be chagrined if I decided any of these issues in  
18 advance that the sun comes up for me every morning for the  
19 first time. And just because I decided something one way,  
20 doesn't mean that I'm bound to decide it the same way the next  
21 time it comes up.

22 So that sounds like a real issue, and I'll take a  
23 briefing on that. Okay.

24 Next, and this is a bigger issue, obviously, with  
25 regard to personal jurisdiction.

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1           As I understand the flow of money, as alleged in the  
2 complaint, we're talking about QC putting money in the banks,  
3 the banks running it through New York in their correspondent  
4 accounts, and then the banks further giving it, putting it in  
5 accounts in the West Bank or Gaza, to which it goes to  
6 terrorist organizations.

7           First of all, is there any dispute?

8           And let me ask, Mr. Rocco: Have I said it right as  
9 to how you see the flow of money?

10          MR. ROCCO: You have said it right, Your Honor.

11          THE COURT: Okay. And then I want to know from any  
12 of the defendants that want to talk to me: Why doesn't the  
13 use of the New York correspondent accounts, as part of that  
14 stream of money, suffice for personal jurisdiction purposes?

15          (No response heard.)

16          THE COURT: We all agree it does.

17          MR. HALLWARD-DRIEMEIER: Your Honor, this is Doug  
18 Hallward-Driemeier. I'm going to let Ms. Fornos address that.  
19 Because the allegations in the complaint about the  
20 transactions have to do with her client, Mr. Al Rayan.

21          The allegations with respect to the second bank,  
22 Qatar National Bank, are not that QNC made any transactions  
23 through New York. Those allegations of the correspondent  
24 banking relationship are solely made with respect to MAR.

25          So after Ms. Fornos speaks, I'll speak to this

1 specific issue with respect to QNB.

2 THE COURT: Okay.

3 MR. HILLEBRECHT: Your Honor, just before Ms. Fornos  
4 begins, this is Mr. Hillebrecht for Qatar Charity.

5 The Charity has a unique defense in this context, so  
6 I do think it makes sense for the banks to go first. But I  
7 just want to flag that for you, I'd like to add something  
8 after that.

9 THE COURT: Okay. Well, Mr. Hallward-Driemeier is  
10 deferring to Ms. Fornos.

11 Ms. Fornos, will you defer to Mr. Hillebrecht?

12 MR. HILLEBRECHT: Your Honor, I was suggesting that  
13 I would go after the banks. I think that makes more sense.

14 THE COURT: Okay. So you start, Ms. Fornos.

15 MS. FORNOS: Yes, Your Honor.

16 I believe the issue here is that the corresponding  
17 allegation, the link to New York, is with respect to our  
18 client, Masraf Al Rayan, only our client.

19 And we're well aware of *Licci*. We're aware of the  
20 guidance of the Second Circuit.

21 But there is a distinction between maintaining  
22 accounts, and I will explain that in this particular case,  
23 what the plaintiffs have alleged are general allegations of  
24 use of correspondent banking.

25 We know that the only specific allegations contained

1 in paragraph 130 that has a specific time frame and a specific  
2 amount, although they collectively lump defendants together,  
3 and they don't even say that that went through correspondent  
4 banking. So our position is that they haven't met the  
5 purposeful availment.

6 But even if they do, Your Honor, there is still the  
7 requirement under the Long-Arm Statute that there needs to be  
8 a nexus, a nexus between the actual corresponding activity  
9 that ties them to New York. And I would underscore that our  
10 client does not have branches in New York, does not operate in  
11 New York, and the final wrongful illegal act. The illegal act  
12 of these individuals.

13 And we would agree that the Court frame the flow of  
14 money correctly, but there's nuances in that flow. They're so  
15 generalized allegations of: We have one client, one customer,  
16 that allegedly uses this correspondent bank, not -- there's no  
17 other allegations as in *Kaplan* where we have exemptions being  
18 given, CTRs being waived.

19 No, just generalized use of correspondent banking,  
20 which goes back to Qatar Charity local branches, which then  
21 allegedly, some unspecified sums, unspecified amounts, goes to  
22 unidentified affiliates of Hamas and PIJ, and thereafter  
23 somehow makes their way to the individual attackers who caused  
24 these injuries.

25 The attenuation here is insufficient for

1 jurisdiction. And, Your Honor, this is actually dovetails  
2 into the ATA and JASTA, because there isn't enough for general  
3 awareness.

4 And these issues are all intertwined, the  
5 jurisdiction and the ATA and JASTA are all part of the same  
6 deficiency that permeates this complaint.

7 THE COURT: Well, that raises a possibility in my  
8 mind, and I think the defendants have to think about this,  
9 because it's a personal jurisdiction issue, there's really no  
10 need at all for Mr. Rocco to have alleged anything about it in  
11 the complaint. You don't have to allege a personal  
12 jurisdiction in a complaint. Rule 8(a) doesn't say anything  
13 about a personal jurisdiction.

14 The fact that he has, means that I can consider  
15 those allegations in opposition to a motion to dismiss on that  
16 ground. But it also seems to me that it might require  
17 discovery, as it often does in a personal jurisdiction  
18 context, and the defendants might have to give up a lot of  
19 discovery, as a preliminary issue, at an early date, before I  
20 would be comfortable dismissing it on a lack of personal  
21 jurisdiction grounds.

22 I'm not saying that that should dissuade you from  
23 making your motions, I just think you need to be aware of it.

24 And I also -- I agree, Ms. Fornos, that the personal  
25 jurisdiction issue in this respect is kind of intertwined with

1 the substantive issues. And when that happens, the authority  
2 generally suggests that we do the discovery as part of merits  
3 discovery, and then I would hold decision on the personal  
4 jurisdiction issue until a later date, which might even be  
5 trial.

6 So I'm not sure if it's, again, worth the defendants  
7 making the motion, even though I think you might absolutely be  
8 right, just be aware that I'm likely to order some discovery  
9 on it if I find any dispute about the facts, and we may have a  
10 hearing on it, and that hearing may be the day before trial or  
11 during trial. Okay? So just keep that in mind.

12 MS. FORNOS: Understood, Your Honor.

13 I think we would just ask the Court to consider it,  
14 and we will brief this, that it's a gatekeeping issue, and the  
15 initial jurisdiction can also be stayed. And on a 12(b)(6),  
16 the Court can look at the allegations and determine that there  
17 isn't even the bear minimum threshold to warrant an ATA claim  
18 or a JASTA claim and, therefore, there is no reason to get to  
19 the issue of jurisdiction.

20 THE COURT: I disagree with you on that.

21 Well, you're saying that I can view the jurisdiction  
22 issue as part of the 12(b)(6). I don't agree with that.

23 I think the jurisdiction issue, whether it's subject  
24 matter or personal jurisdiction, as here, is a separate thing,  
25 and it allows me to go beyond the complaint, because as I



1 said, Rule 8 doesn't allow -- doesn't require any kind of  
2 allegations about personal jurisdiction, although lawyers  
3 commonly do it.

4 If what you're saying is, I'll never get to that  
5 personal jurisdiction issue because I will have dismissed the  
6 complaint under 12(b)(6) prior to that, yes, that's fine.  
7 Okay, that would work, if it comes out that way.

8 All right. Any of the other counsel want to comment  
9 on that aspect of it?

10 MR. HALLWARD-DRIEMEIER: Thank you, Your Honor.  
11 Doug Hallward-Driemeier for QNB again.

12 With respect to Qatar National Bank, the issue is a  
13 bit different. Because as Ms. Fornos indicates, all of the  
14 allegations with respect to correspondent banking  
15 relationships and transfers through those New York  
16 correspondent banks had to do with MAR.

17 The allegations with respect to QNB are simply that  
18 they were maintaining accounts for QC and certain individuals  
19 in Qatar.

20 The way that the plaintiffs indicate in their  
21 premotion letter that they expect to obtain personal  
22 jurisdiction over QNB is under a theory of conspiracy  
23 jurisdiction. And they cite two cases. They cite *Allianz* and  
24 *Schwab* for that.

25 But *Allianz* and *Schwab* did not concern the threshold

1 question of statutory jurisdiction over the person. They  
2 think -- and those two cases, both of them, identify that  
3 statutory jurisdiction was conceded, and the Court merely  
4 proceeded to the threshold, to the second question of  
5 constitution of the outer bounds of due process under the  
6 constitution.

7 But here, we have a statutory jurisdiction problem.  
8 Because New York's Long-Arm Statute does not employee the  
9 doctrine of conspiracy jurisdiction.

10 Your Honor recognized that in the *Dental Supplies*  
11 case, and two cases, at least, I think there are multiple,  
12 since *Schwab* and *Allianz* have reiterated that with respect to  
13 New York's Long-Arm Statute.

14 And that's because New York's Long-Arm Statute,  
15 302(a), uses the phrase "person or agent". And the courts  
16 have construed that reference to agent to adopt principles of  
17 principle agent law, and that the principle must direct, and  
18 to some degree control, the agent for the actions within the  
19 jurisdiction here in New York to be ascribed to the principle.

20 So here with respect to QNB, it's not an inadequacy  
21 of factual allegations, there are no factual -- rather, I  
22 should say there are no factual disputes. It's rather that  
23 the theory of personal jurisdiction is legally deficient.

24 And because we don't meet the statutory  
25 jurisdictional question, you don't ever get to the issue

1 addressed in *Schwab* and *Allianz*.

2 THE COURT: But might we not still get into  
3 discovery, because the plaintiff doesn't know the full scope  
4 of the relationships here? And even under the narrow  
5 statutory defense that you're trying to raise to personal  
6 jurisdiction, the plaintiff is entitled to that information  
7 before you say, Oh, well, you know, we're just not an agent  
8 under the Long-Arm Statute?

9 MR. HALLWARD-DRIEMEIER: Well, though, Your Honor,  
10 as I understand the cases, they would allow personal  
11 jurisdiction where there are questions of jurisdictional  
12 factual disputes related to personal jurisdiction, but here  
13 that's not the dispute.

14 The dispute is whether as a matter of law there is  
15 such a document in New York's Long-Arm Statute as conspiracy  
16 jurisdiction. Because the allegations about QNB are all about  
17 maintaining, merely maintaining, accounts for four customers  
18 in Qatar.

19 THE COURT: Okay. I understand what you're saying  
20 and that makes sense.

21 I just want to caution you that it seems to me that  
22 the plaintiffs are, again, not confined by what's alleged in  
23 the complaint with regard to personal jurisdiction.

24 They may come up with a whole new theory that they  
25 haven't pled in opposition to a motion to dismiss on personal

1 jurisdiction. And because of that, they can say, If what we  
2 think is true, then New York Long-Arm would cover this  
3 transaction but, Judge, we need some discovery to see if it's  
4 true. So just be aware of that, okay?

5 And I think one thing that we should all agree on,  
6 based on what I've heard so far is, at least as to some of the  
7 defendants, I'm not going to see any due process  
8 constitutional discussion, right?

9 I mean, because we're talking about, at least on  
10 this argument, a statutory deficiency. And the New York Court  
11 of Appeals has said, although whether it's exaggerated or not  
12 is another thing, that the New York Long-Arm Statute does not  
13 reach to the full limit of constitutional jurisdiction.

14 So does anyone think they need to raise the recent  
15 Supreme Court cases on due process, or are we limiting  
16 ourselves to 302(a)(1), I think it is?

17 MR. HALLWARD-DRIEMEIER: We think, Your Honor, that  
18 we're not yet to the second question of due process, we're  
19 only at the question of statutory jurisdiction.

20 THE COURT: Well, if you raise it just on statutory  
21 and I rule against you, you will have waived the due process  
22 challenge as to personal jurisdiction, right?

23 MR. HALLWARD-DRIEMEIER: Well, Your Honor, I think  
24 that we would have defenses to both, because even if we got to  
25 the question of *Schwab* and *Allianz*, there would need to be an

1 adequate allegation of conspiracy. And with respect to QNB,  
2 there is no allegation of conspiracy.

3 With respect to QNB and MAR, the sum total of  
4 allegations seem to be that we each have, as a customer, Qatar  
5 Charity. And that's not enough to establish a conspiracy on  
6 which MAR's contacts with the jurisdiction could be  
7 attributed, even under the constitutional principles  
8 articulated in *Schwab*.

9 THE COURT: Again, I'm just going to ask you to keep  
10 in mind that the plaintiff is not bound by what's pled in the  
11 complaint when it comes to personal jurisdiction. They can  
12 come up with a whole new theory.

13 So if your motions, and I'm saying this to all the  
14 defendants, basically say look at allegations in this  
15 complaint, Judge, those are not enough for personal  
16 jurisdiction. And Mr. Rocco comes back and says, You know,  
17 maybe not, maybe yes, but here's what we really think  
18 happened, and this would be enough for personal jurisdiction,  
19 but we need discovery on it, I'm not sure that motion will get  
20 you anything.

21 MR. HALLWARD-DRIEMEIER: I appreciate that, Your  
22 Honor. Obviously, I can't blame the deficiencies of an  
23 alternative theory until I've seen it. But we will address it  
24 at that time.

25 THE COURT: That's the nature of personal

1 jurisdiction. And I think there's a lot of confusion  
2 sometimes when attorneys say, Oh, the complaint alleges this,  
3 and that's not good enough. You know, you have to say, There  
4 is no personal jurisdiction, it's a fact as to what happened.

5 And that's going to be your burden -- it's the  
6 plaintiffs' burden to prove there is personal jurisdiction.  
7 But you have to go forward at least and show there's a basis  
8 to find that there's not.

9 Okay, I think we're on the same page.

10 Mr. Hillebrecht, do you need to add something?

11 MR. HILLEBRECHT: Just very briefly, Your Honor,  
12 taking the points that have been made.

13 I just wanted to remind the Court, as we set forth  
14 in our premotion letter, we are very differently situated.

15 Unlike the defendants in *Licci* and all the other  
16 cases that I'm sure the plaintiffs will rely on with our  
17 codefendants, we're not a bank.

18 And we cited Your Honor to the *Berdeaux* case,  
19 Judge Caproni's decision -- for the reporter it's  
20 B-E-R-D-E-A-U-X -- which very forcibly came out for the view  
21 that the theory followed in that case, or pushed by the  
22 plaintiff in that case, was not sensible.

23 Because it makes no sense for a customer in a  
24 position like Qatar Charity, where, again, the allegation is,  
25 we have money in Qatar that we want to get to our own bank

1 accounts in the Palestinian territories. We have no desire to  
2 send it through New York, it makes no sense for us to send it  
3 through New York, and we're totally indifferent (audio  
4 interference.)

5 THE COURT: But do you know, though, that it's been  
6 sent through New York?

7 MR. HILLEBRECHT: So *Berdeaux* holds, broadly and  
8 specifically, that knowledge is not enough. That it has to be  
9 purposeful availment. It has to be directed by the customer.

10 Here it's -- and I understand what Your Honor just  
11 said about what needs and does not need to be in the  
12 complaint, but I do think it's significant. There's no  
13 allegation in the complaint that the customer, Qatar Charity,  
14 directed that they use the New York banks.

15 And as *Licci*, too, and other cases that I know Your  
16 Honor's familiar with and made clear, it's not necessary to do  
17 so. For this kind of transfer, from one foreign jurisdiction  
18 to another, it is not necessary to go through New York.

19 And one of the points we're going to make in the  
20 motion, Your Honor, is, you know, accepting at face value for  
21 the moment the core allegations here; i.e., that Qatar Charity  
22 was sending funds to U.S.-designated terrorist organizations,  
23 why would we purposefully send money into the United States  
24 when there's no need to do so?

25 So I just wanted to flag for Your Honor that that's

1 the argument that we have, none of the other defendants do,  
2 and we would be pursuing.

3 THE COURT: Okay.

4 Mr. Rocco, one of the things that does concern me  
5 is, you know, to get by on personal jurisdiction, whether it's  
6 in your complaint or extraneous to your complaint, you're  
7 going to have to raise a prima facie case, I believe, under  
8 the case law that there is personal jurisdiction. And I'll  
9 either assume that the evidence you produced, or the arguments  
10 that you make are accurate, or I'll order discovery to see if  
11 they are, one way or the other.

12 But in doing that, you know, looking at this  
13 complaint, it does seem to me that there's a lot of lumping  
14 together of defendants who might have behaved very  
15 differently.

16 And I think on personal jurisdiction, you can't just  
17 put a label of conspiracy on them and say that's our argument,  
18 you're going to have to show me some basis by which a  
19 conspiracy was reached.

20 Now maybe that means I should put off personal  
21 jurisdiction until all the discovery has been done, but you're  
22 going to have to think about how you want to approach it.  
23 Because like I've been saying to the defendants, the  
24 complaint -- if I assume what's in the complaint is true, I'm  
25 not sure that's enough for personal jurisdiction.



1 MR. ROCCO: Well, on the issue of the complaint,  
2 Your Honor, I do want to clear up one thing, because I think  
3 it's been misstated. That respectfully with respect to my  
4 cocounsel, the complaint unequivocally alleges that QNB's New  
5 York correspondent accounts process U.S. dollars to go to  
6 Hamas and PIJ.

7 We couldn't be clearer, paragraph 6 and 13 of the  
8 complaint. Paragraph 13 says, "Qatar National Bank and Masraf  
9 Al Rayan bank purposefully and knowingly effectuated U.S.  
10 dollar-denominated funds transfers on behalf of Qatar Charity  
11 to banks in New York."

12 Now, of course, we've not had discovery, Your Honor,  
13 so we were able to make that general allegation, but these  
14 confidential bank records are not available to folks like us,  
15 but (audio interference) Qatar Charity staffer in Israel, we  
16 wouldn't have had the detail we have on Masraf Al Ryan.

17 But we think -- that's the kind of thing  
18 (indiscernible) give us, Your Honor, the correspondent  
19 accounts that the records exist that we've alleged not only  
20 did they maintain accounts for Qatar Charity and QNB, but also  
21 for these notorious Hamas fugitives. And we've alleged that  
22 those accounts were used to fund Hamas and PIJ terrorism.

23 Now I think the one thing that's not acknowledged  
24 and been ignored specific allegations of the complaint, but  
25 the general allegations here that distinguish this case from

1 any of the cases they cite, and the cases that like QC, Qatar  
2 Charity, can say that this regular customer has no idea what's  
3 going on and the bank has been used by U.S. bank.

4 That's not this case, Your Honor. This case is  
5 unique in the sense that you have the government of Qatar, and  
6 the royal family of Qatar, they are openly sponsoring Hamas  
7 terrorism. They're pledged publicly a billion dollars to  
8 Hamas.

9 They've been sanctioned for doing that by various  
10 countries. The U.S. -- they've been called out in the U.S.  
11 and Congress and by Treasury for being a permissive state for  
12 financing terrorism. They've been criticized for supporting  
13 Hamas. And then (audio interference) is in a dominant  
14 position on each one of these defendants' boards and controls  
15 these defendants.

16 So the notion that they didn't know what was going  
17 on here, or that we haven't satisfied that level of scienter,  
18 we've got more than we normally would have in a case like this  
19 to get out of the gate on a claim.

20 And the notion that Qatar Charity had no idea that  
21 they were going to access the U.S. banking system, we're  
22 talking millions of dollars. They had to access it. They  
23 needed dollars, as alleged in the complaint.

24 Hamas and PIJ wants dollars. They don't want  
25 sheckles. They don't want euros. They don't want, you know,

1 lyra, or anything else we can think of, they had to have  
2 dollars.

3 And to have that quantity of dollars, they knew that  
4 they were going to access the U.S. banking system. It wasn't  
5 because they casually decided it, they had to. And they did  
6 it in a way to try to remove the direct role of Qatar and the  
7 government by using these entities they controlled, the two  
8 banks and Qatar Charity.

9 And Qatar Charity is not some innocent customer  
10 here, Your Honor. As alleged in the complaint, they've been  
11 sanctioned by just about every democracy in the world for  
12 being a sponsor of terrorism.

13 They were sanctioned by the U.S. as a Category III  
14 financier of terrorism. They were sanctioned by Israel and  
15 banned from --

16 THE COURT: You're still going to have to tie it up  
17 to this case, right?

18 MR. ROCCO: Understood.

19 It's not a coincidence, Your Honor, you have the  
20 Qatar royal family in control of these entities. That  
21 bespeaks the conspiracy we're talking about.

22 You have an open and notorious sponsorship of Hamas  
23 to start, and then you have them infiltrating these entities  
24 and pursuing this scheme or their will to finance these  
25 terrorist activities.

1 I just respectfully say, Your Honor, that's the  
2 setting here which distinguishes this case from just about any  
3 other case that they are citing in these papers. It's a  
4 different set of circumstances.

5 I think it permeates not only the personal  
6 jurisdiction issue, which Your Honor has aptly set out the  
7 issues, but it permeates the merits as well.

8 We're hearing that they have this activity -- first  
9 of all for jurisdiction, Masraf is saying, Well, this is not  
10 connected enough to New York. Well, it was essential, Judge.

11 The statement is the activity in New York has to be  
12 not completely (audio interference) from the claims we have  
13 here. It was essential to the claims we have here that they  
14 got U.S. dollars. And that's been alleged in the complaint.  
15 That's what Hamas requires. That's what PIJ requires.

16 And so this is not a case where there's some casual  
17 glance to New York and that's why here. It's here because  
18 they needed U.S. dollars, and that's where they could get  
19 them.

20 THE COURT: I got your point. All right, I  
21 understand the arguments on that.

22 The last thing I want to talk about, and only  
23 briefly having touched upon it, because it is somewhat  
24 intertwined, is the adequacy of the complaint to state a  
25 claim.

1 I just want to know, Mr. Rocco, are you really  
2 pressing the primary liability theory, or is this strictly a  
3 secondary liability case?

4 MR. ROCCO: Your Honor, I think we've alleged both,  
5 because we do have Your Honor's decision, as well as others,  
6 that show, that demonstrate, that the financing activity here  
7 that we needn't have a direct -- I think the defendants argue  
8 that we have to show they were pointing the trigger and they  
9 weren't the committing the violent acts.

10 But as Your Honor has held in the context of direct  
11 claims, it's enough to have this kind of direct financing with  
12 knowledge that we've alleged that itself is the dangerous to  
13 human life activity that satisfies the statute.

14 So I think -- if you ask me (indiscernible)  
15 certainly it's easier for us to demonstrate aiding and  
16 abetting liability here, but that's not to say we don't have a  
17 direct ATA claim.

18 THE COURT: And an opposition to a 12(b)(6) motion,  
19 you're going to continue to assert the direct liability  
20 theory?

21 MR. ROCCO: I think we have a basis to do so, Your  
22 Honor, so we would.

23 THE COURT: Okay. I don't know that that's the way  
24 you're going to prevail in this case. I guess everything in a  
25 case this big is important, but you might consider, you know,

1 narrowing your grounds and just going forward with what  
2 believe you have.

3 I do want to emphasize to all the parties, there's  
4 been a discussion of other cases that I've read and rendered  
5 in this area, and I made it clear that I'm not wedded to those  
6 decisions. But at the same time, because of that, I don't  
7 want any of the parties to feel they can't say, Judge, you  
8 were wrong in this case.

9 You know, you can try to distinguish cases all you  
10 want, but if you think I got it wrong, tell me, and I will  
11 consider that as if seeing it for the first time. Okay.

12 All right. Let's talk about a schedule.

13 When can the defendants file their motion? Is  
14 Monday too soon? I know that someone said "yes".

15 What's the earliest that you can file your motions?

16 MS. FORNOS: Your Honor, if we could have -- and  
17 I'll defer to everyone -- I would ask for at least two weeks?  
18 Or one week? I don't know where the defendants are.

19 THE COURT: I think they're annoyed with you for  
20 asking for two weeks, right? Someone is. Someone is going to  
21 suggest you need at least a month, right?

22 MR. HALLWARD-DRIEMEIER: No, Your Honor, I actually  
23 think that two weeks would be an appropriate time.

24 THE COURT: Okay.

25 MR. ROCCO: We agree with Qatar Charity, Your Honor.

1 THE COURT: Great. Very efficient.

2 Let's have the motions due two weeks from Monday.

3 And then I'm going to set, Mr. Rocco, two weeks for  
4 opposition.

5 That's probably not going to be enough. But once we  
6 review the papers, get back to me with a reasonable request  
7 for an extension.

8 And I'm going to say the same amount for reply. I'm  
9 not going to set a reply that generally you will need for ten  
10 days after opposing papers, but here I think the defendants  
11 are going to need to see plaintiffs' opposition before they  
12 know how much time they need for reply. So I'm just going to  
13 leave the response and the reply dates loose for now.

14 And then the next question is, and the only  
15 question, what do the parties want to do about discovery  
16 pending the motions?

17 Let me start with Mr. Rocco and see if I can make it  
18 easy.

19 Subject to any discovery that you need, Mr. Rocco,  
20 to oppose the motions, and that might or might not include  
21 overlapping merits discovery, are you willing to stay  
22 discovery, pending determination of the motions?

23 MR. ROCCO: Your Honor, we think it's appropriate to  
24 move forward with at least jurisdictional discovery, if  
25 they're going to pursue, you know, the jurisdictional motion,

1 and it sounds like they are.

2 I mean if they're going to table that, then we can  
3 just proceed with merits discovery once Your Honor's decided  
4 the motions.

5 But we're prepared to file Monday with, or serve, at  
6 least, the jurisdictional discovery requests on each  
7 defendant, if that's allowed by Your Honor. But obviously we  
8 will leave it up to Your Honor's discretion as to how you want  
9 to proceed.

10 THE COURT: In any event, I'm going to ask you to  
11 wait until you see their moving papers, because it will refine  
12 and educate you on what you can get from them in connection  
13 with this. Don't serve it on Monday.

14 What about the defendants? Are you willing to go  
15 forward with some discovery, or is it your preference that you  
16 not?

17 MS. FORNOS: Your Honor, we believe that discovery  
18 is premature at this time. For all the reasons that have been  
19 stated, and the things that haven't been stated with respect  
20 to general awareness under JASTA, we don't believe that  
21 plaintiffs can survive a 12(b)(6).

22 We would ask the Court to consider the 12(b)(6)  
23 before we engage in discovery.

24 And also, Your Honor, I don't know if the Court  
25 intends to discuss the issue of page limits, because we would



1 respectfully request --

2 THE COURT: Page limits are waived. Page limits are  
3 waived.

4 I would appreciate some coordination between defense  
5 counsel, to the extent you have common arguments, and I know  
6 sometimes this is a client relations thing, but if you can do  
7 one brief of your common arguments, and then separate  
8 supplemental briefs arguments that are specific to your  
9 client, that would be helpful.

10 I'm not going to order it. If you can do it, I'd  
11 appreciate it. And I'm not going to limit any of those as to  
12 the number of pages.

13 MS. FORNOS: Thank you, Your Honor.

14 THE COURT: This is not that sort of case.

15 MS. FORNOS: Thank you.

16 THE COURT: Okay. I'm going to defer ruling on what  
17 kind of discovery we have. I'm going to stay it for now. I  
18 want to look at the defendants' motions. And then I want  
19 Mr. Rocco to have a chance to opine on what he needs now and  
20 why he needs it.

21 And also, frankly, when I've read in detail the  
22 defendant motions, I may be able to form a view as to how  
23 likely it is that the case might go completely away so that we  
24 don't need discovery.

25 So I'm not going to make any determinations until

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1 I've seen the motions. Okay?

2 Anything else anyone needs to address?

3 MR. ROCCO: That's it. We appreciate your time, as  
4 always.

5 THE COURT: I appreciate you calling in. It's  
6 educated me a lot, which is why I hold these conferences, and  
7 I'll look forward to your papers.

8 We are adjourned.

9 (Chorus of: Thank you, Your Honor.)

10

11 (Whereupon, the matter was concluded.)

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16 I certify that the foregoing is a correct transcript from the  
17 record of proceedings in the above-entitled matter.

18 s/ Linda D. Danelczyk

January 31, 2022

19 LINDA D. DANIELCZYK

DATE

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